IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.283 OF 1995

Nand Kishor Agarwal. ...Petitioner.

VS.

1. Jayabharat Credit Limited
2. Jaideo Prasad Agarwal, proprietor of the Jay Pee Roadlines. ...Respondents.

Mr.Subhash Jha i/b. Law Global, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 27th February, 2006

P.C.:-

1. By this petition filed under Section 30 of the Arbitration and Conciliation Act,1940, the petitioner challenges the Award made by the sole Arbitrator. It appears from the Award that though the petitioner received a notice from the learned Arbitrator, he did not appear before the learned Arbitrator. The explanation given by the petitioner for not appearing before the learned Arbitrator, in my opinion, cannot be said to be a sufficient cause. Nevertheless the fact remains that it is an ex-parte award and as the petitioner has expressed his willingness either to deposit 50% of the awarded amount

or to furnish bank guarantee of that amount and as the respondents are also not appearing though the respondents are duly served, in my opinion, the petitioner deserves an opportunity to be given to him to put forth his say in the matter. In my opinion, the following order would meet the ends of justice:-

The Award impugned in the petition is remitted back to the learned Arbitrator for reconsideration of the entire matter. The petitioner has undertaken to appear before the learned Arbitrator. The petitioner has stated that for the purpose of service, the learned Arbitrator may serve notice on him on the address disclosed in the petition. The learned Arbitrator shall, after reconsidering the matter, make a fresh award. This is subject to the condition that within a period of Eight weeks from today, the petitioner will either deposit 50% of the Awarded amount in this Court or furnish bank guarantee of a nationalised bank of that amount to the satisfaction of the Prothonotary and Senior Master of this Court and shall keep the bank guarantee current till the matter is pending before the learned Arbitrator. The disposal of that amount or bank guarantee shall be governed by the Award that the learned Arbitrator may make.

The learned Arbitrator shall commence the proceedings as expeditiously as possible and shall make fresh Award as expeditiously as possible within a period of Six months from the date on which, after depositing or furnishing bank guarantee, the first meeting of the

learned Arbitrator takes place.

The petition is disposed of.